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May 19, 2006

Via E-mail (Phase1Comments@ecy.wa.gov)
Municipal Stormwater Phase 1 Comment
Department of Ecology
Water Quality Program
PO Box 47696
Olympia, WA 98504-7696
Attention: Ann Wessel

Re: Puget Soundkeeper Alliance's Comments on Draft Phase I Municipal Stormwater General Permit

Dear Ann:

These comments on the draft Phase I Municipal Stormwater General Permit are submitted on behalf of the Puget Soundkeeper Alliance (PSA). Thank you in advance for your consideration.

General Comments

Comment 1: In light of the claims challenging the Environmental Protection Agency's failure to consult with federal wildlife agencies, and the probability that EPA will do these consultations, PSA suggests this, and other NPDES permits issued before consultation is completed, contain an explicit "reopener clause" requiring Ecology to make any changes to the permit at EPA's request through permit modification.

Comment 2: Section 402(p)(3)(B)(iii) of the Clean Water Act, 33 U.S.C. § 1342(p)(3)(B)(iii), sets the standard that all permits for discharges from municipal storm sewers must meet. Under this standard, municipal stormwater permits must "require controls to reduce the discharge of pollutants to the maximum extent practicable." Sections 402(p)(4)(A) and (B) require that permits provide for compliance with this MEP standard "as expeditiously as possible, but in no event later than 3 years after the date of issuance of such permit." 33 U.S.C. § 1342(p)(4)(A), (B).

Ecology has determined that "implementation of the stormwater management program required under this permit constitutes reduction of pollutants to the maximum

extent practicable (MEP)." Draft Fact Sheet, p. 19, ll. 24-27. The Clean Water Act therefore mandates that these SWMPs be fully implemented no later than 3 years after the effective date of the permit. There are many instances, however, where the permit establishes timelines that are inconsistent with this mandate, and therefore violate the CWA. PSA has identified several illegal timelines in specific comments below. To comply with the CWA, Ecology must shorten each of these timelines to require compliance within 3 years.

Comment 3: In general, PSA is pleased that Ecology would incorporate and thereby prescribe key portions of its stormwater management manual into these permits by reproducing them in the Appendix 1. However, PSA shares the concerns that many have expressed about some of the 2005 modifications made to the Western Washington Manual. In particular, PSA shares the concerns expressed by the U.S. Fish and Wildlife Service and NOAA Fisheries in their joint December 23, 2004, comments on the 2005 manual revisions and their September 2005 comments on the preliminary drafts of the municipal stormwater permits. Like the Services, PSA questions whether the changes to applicability criteria for the flow control standards (both for highly urbanized drainage basins and to exempt river reaches from flow control), the average annual daily traffic thresholds for advanced treatment, and the limitations on implementation of construction stormwater pollution prevention requirements are adequate in consideration of the needs of threatened and endangered salmonids. Given the changes made in the 2005 amendment, PSA does not believe the Western Washington Manual continues to represent AKART, or MEP.

Comment 4: Under § 308(a) of the CWA, 33 U.S.C. § 1318(a), Ecology must include sufficient monitoring requirements "[w]henever required to carry out the objective of this chapter," including but not limited to developing effluent limitations or performance standards and determining whether any permittee is in violation. These objectives are ambitious: "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" by eliminating the discharge of pollutants to navigable waters, prohibiting the discharge of toxic pollutants in toxic amounts, and to attain water quality that provides for recreation and the protection of fish, shellfish, and wildlife by 1983. 33 U.S.C. § 1251(a). To comply with § 308(a), this permit must establish monitoring requirements that (a) are sufficient to determine whether stormwater discharges are causing or contributing to violations of water quality standards, and (b) provide useful information for developing effluent limitations or performance standards in the next permit. For the reasons explained more fully in specific comments below, PSA does not believe that the monitoring program outlined in this permit is sufficient for these purposes.

Comment 5: The permit and draft fact sheet indicate that the primary objective of the monitoring program is to provide a feedback loop for adaptive management. Yet, the permit is entirely devoid of any adaptive management process or program. This permit should require monitoring sufficient to provide information with which permittees may make real-time changes to their programs, and should require these changes be made in a meaningful timeframe as part of a prescriptive adaptive management program.

Condition S4: Compliance with Standards

Comment 6: PSA is pleased that Condition S4.A. includes a prohibition on discharges that would violate water quality standards. Unfortunately, the remainder of the permit does too little to ensure compliance with this condition. The draft fact sheet explicitly provides that Ecology's strategy is merely to "evolve towards eventual compliance with water quality standards through successive permit cycles." FS, p.23, ll. 43-44. It thus appears that despite the statement in Condition S4.A., this permit will not effectively prohibit discharges that will violate water quality standards.

One example of where the permit seems to run afoul of the mandate in RCW 90.48.520 is the lack of numeric effluent limitations for copper in discharges to waterbodies that appear on the 303(d) list for copper. There is plenty of research showing that even a tiny concentration of copper has profound adverse impacts on salmonids. In the case of discharges to water bodies that are already impaired because of copper, any discharge of that metal would cause or contribute to violations of water quality standards.

The draft fact sheet explains that Ecology has discretion to determine whether to require strict compliance with § 301(b)(1)(C) of the CWA, 33 U.S.C. § 1311(b)(1)(C) (requiring more stringent effluent limitations necessary to meet water quality standards). Since stormwater is the leading contributor to water quality pollution in urban waterways, it makes sense to require strict compliance with § 301(b)(1)(C) in this permit.

Ecology explains that "it may take decades or longer to address the water quality impacts of existing municipal stormwater discharges." FS, p. 26, ll. 25-26. Puget Sound does not have decades. Ecology should take decisive action now to effectively mandate compliance with water quality standards.

Question 6.1: How does the permit meaningfully ensure compliance with water quality standards, as required by RCW 90.48.520?

Condition S5: Stormwater Management Program

Comment 7: In its review of EPA's Phase II regulations, the Ninth Circuit Court of Appeals held that municipal stormwater dischargers' stormwater management programs must be reviewed by permitting agencies. *Environmental Defense Center v. EPA*, 344 F.3d. 832, 856 (9th Cir. 2003) ("... stormwater management programs that are designed by regulated parties must, in every instance, be subject to meaningful review by an appropriate regulating entity to ensure that each such program reduces the discharges of pollutants to the maximum extent practicable."). The draft permit provides for no such review. The draft fact sheet explains that Ecology has chosen instead to spell out minimum elements of a stormwater program that should, if followed, meet the MEP standard. Given the lack of Ecology review and approval, the permit should at least

explicitly state that any failure to achieve the minimum elements constitutes a permit violation.

As the fact sheet acknowledges, the one-size-fits-all approach of this permit "provides less flexibility to tailor local stormwater programs to reflect local priorities and needs." FS, p. 17, ll.19-21. PSA therefore suggests the permit require permittees (both Phase I and Phase II) sharing a basin or watershed to cooperatively develop SWMPs that are tailored to local conditions and priorities.

Question 7.1: Given that Ecology will not review and approve permittees' SWMPs, how will this permit ensure that these stormwater programs actually meet the MEP standard?

Comment 8: Condition S5.A.1. requires permittees to submit their SWMP with the first year annual report and to update the SWMPs annually, but does not apparently require permittees to submit the SWMP updates. Permittees should be required to submit SWMP updates to Ecology with each annual report.

Comment 9: Condition S5.A.3. states that permittees shall track certain activities "as stipulated by the respective program component." This language is unclear.

Question 9.1: What does "as stipulated by the respective program component" mean?

Comment 10: Condition S5.B. states that SWMPs shall be designed to "reduce the discharge of pollutants from MS4s to the maximum extent practicable, meet state AKART requirements, and protect water quality." The phrase "protect water quality" is too vague to permit evaluation of whether permittees are meeting this condition. Other permit terms with the vague phrase "protect water quality" include: S5.C.5.b.ii., S5.C.7.b.i., and S6.A. In each case, Ecology should replace that phrase with: "ensure discharges will not cause or contribute to violations of water quality standards." This is required by RCW 90.48.520.

Question 10.1: What exactly does "protect water quality" mean in this context? Does it mean "ensure discharges will not cause or contribute to violations of water quality standards"? If not, why not?

Comment 11: Condition S5.C.1. does not include a requirement for permittees to submit a statement by legal counsel that the permittee has all necessary legal authority to comply with the permit. In the preliminary draft, such a statement was required to be submitted within one year from the effective date of the permit.

Question 11.1: How does the permit ensure permittees have the requisite legal authority? Why was the requirement to provide a statement to that effect removed?

Comment 12: Developing and maintaining comprehensive maps of connections and outfalls, including the tributary conveyances, associated drainage areas, and land use for outfalls, is crucial to effective stormwater management. Only with such maps is it possible to track and resolve many problems. When a serious spill occurs, for example, having adequate maps is the only way to know where the pollutants will be delivered, and thus the only way to adequately respond to the spill. Additionally, when a problem is detected at an outfall, comprehensive mapping helps determine the source. Finally, having these maps facilitates the work necessary to prevent, investigate, and terminate illicit discharges and illegal connections.

Comment 13: Ecology acknowledged the necessity of having adequate mapping when it required all outfalls in the 1995 permit. (Condition S7.B.6.a.). Permittees have now had more than ten years to complete that task, yet Condition S5.C.2.b.i. provides an additional two years for permittees to map all known municipal separate storm sewer outfalls. It is absurd and unacceptable to extend the deadline for this task by another two years.

Question 13.1: What is the justification for providing permittees with two more years to complete a task that should have been completed under the 1995 permit?

Question 13.2: How does providing additional time for permittees to complete tasks already required to have been completed under the 1995 permit comply with the Clean Water Act's antibacksliding prohibition?

Question 13.3: How does providing additional time for permittees to complete tasks already required to have been completed under the 1995 permit constitute MEP?

Comment 14: In the preliminary draft, Condition S7.C.2.g. required permittees to develop within 2 years, and make available to the public, a database with information on precipitation, stormwater quality and quantity records, and water quality and physical characteristics of receiving water that could be impacted by stormwater. The preliminary draft also required the SWMP to include maps depicting existing land use and zoning. (Preliminary Draft Condition S7.C.2.d., e.). This draft appears not to require all of this information, which would be helpful in enforcement, planning, and monitoring.

Question 14.1: Why did Ecology drop the requirement to include the information called for in Condition S7.C.2.e.-g. of the preliminary draft? If the same information is required elsewhere in the permit, where?

Comment 15: Condition S5.C.2.b.ii. gives permittees 4 years to map tributary conveyances, associated drainage areas, and land use for all storm sewer outfalls with a 24" nominal diameter or larger, or an equivalent cross-sectional area for non-pipe systems. Cities must do this mapping throughout the City, but Counties are only required to map within urban/higher density rural sub-basins. The 1995 permit required such mapping be done for all "major municipal storm sewer outfalls," which were defined as those with a 36" inside diameter or larger, or "for municipal separate storm sewers that

receive stormwater from lands zoned for industrial activity ..., an outfall ....with an inside diameter of 12 inches or more." 1995 Permit Condition S7.B.6.b., c. & p.28.

Given that part of this mapping project should have been done under the 1995 permit, it is outrageous to allow permittees an additional 4 years to complete the project. Furthermore, giving permittees 4 years to complete this task seems inconsistent with Section 402(p)(4) of the Clean Water Act, 33 U.S.C. § 1342(p)(4), which requires that permits "provide for compliance as expeditiously as possible, but in no event later than 3 years after the date of issuance of such permit." Ecology should shorten the time allowed for mapping under S5.C.2.b.ii., and should expand the requirement to include all outfalls.

Question 15.1: Is it Ecology's understanding that permittees have completed this mapping, as required by the 1995 Permit's Condition S7.B.6.b. & c.? If so, what is the justification for giving permittees 4 years to complete mapping for only those outfalls with diameters between 24 and 36 inches?

Question 15.2: If permittees completed the mapping required under the 1995 permit, they would have already mapped the attributes for all 12-inch or larger outfalls conveying stormwater from industrial areas. Yet the draft permit appears to require less; i.e., mapping only 24-inch or larger outfalls throughout cities, and in certain portions of counties. How does this comply with the Clean Water Act's antibacksliding prohibition?

Question 15.3: What is the justification for requiring Counties to complete this mapping only for urban/higher density rural sub-basins?

Question 15.4: The 24-inch threshold appears arbitrary. Why not require permittees to map these attributes for all outfalls?

Question 15.5: How do the timelines in this section comply with Section 402(p)(4) of the Clean Water Act, 33 U.S.C. § 1342(p)(4)?

Comment 16: Condition S5.C.2.iii. requires permittees to "initiate a program to develop and maintain a map of all connections to the municipal separate storm sewer authorized or allowed by the permittee after the effective date of this permit." The permit should establish a deadline for such programs to be implemented. PSA suggest 90 days.

Comment 17: Condition S5.C.2.b.iv. requires permittees to map existing connections over 8" to municipal separate storm sewers tributary to all storm sewer outfalls with a 24" nominal diameter or larger, or equivalent cross-sectional area. Seattle and Tacoma are given 2 years to complete this task, while Snohomish, King, Pierce and Clark Counties are given 4 years to map just half of the area within urban/higher density rural sub-basins. These timelines are excessive, particularly for the Counties.

Question 17.1: What is the justification for requiring Counties to map only half of the connections within urban/higher density rural sub-basins?

Comment 18: Condition S5.C.3.a. requires SWMPs to include coordination mechanisms among all entities covered by a municipal stormwater permit "to encourage coordinated stormwater-related policies, programs, and projects within a watershed." PSA strongly supports requiring such coordination, which is crucial for effective planning, priority setting, program evaluation, and monitoring. This provision should be strengthened, however, by replacing "to encourage" with "to ensure."

Comment 19: Condition S5.C.3.b.i. allows permittees 12 months to establish and implement "intragovernmental (internal) coordination agreement to facilitate compliance with the terms of this permit." First, 12 months seems like too long (the preliminary draft required this task be completed within 6 months). Second, it is unclear what such an "agreement" would look like or consist of -- perhaps coordination "procedures" would better accomplish the permit's goals. Third, the intragovernmental cooperation should not just "facilitate" compliance, but should "ensure" it.

Comment 20: Condition S5.C.3.b.ii. allows permittees 12 months to establish and implement intergovernmental coordination procedures, including coordinating stormwater management activities "to avoid conflicting plans, policies and regulations." First, 12 months seems like too long (the preliminary draft required this task be completed within 6 months). Second, the permit should establish a more ambitious goal for shared waterbodies than "avoiding conflicting plans, policies and regulations." PSA suggests Ecology replace the quoted language with: "to establish complementary and comprehensive plans, policies, and regulations."

Comment 21: Condition S5.C.5.b.i. purports to allow permittees to include in ordinances or other enforceable documents the minimum requirements, thresholds, and definitions in Appendix 1, or others "determined by Ecology to be equivalent to Appendix 1". A similar provision is in Condition S5.C.5.b.ii. These provisions do not specify any procedure (including public participation) for Ecology to determine whether alternative minimum requirements, thresholds, and definitions are "equivalent to Appendix 1." NPDES permits should not incorporate minimum performance measures that do not yet exist. Additionally, this provision would allow Ecology to effectively modify permit conditions without the proper process by determining that certain measures are "equivalent" to those in Appendix 1, and thereby authorizing them for use under this permit.

Question 21.1: How will Ecology determine whether alternative minimum requirements, thresholds, and definitions are equivalent to those in Appendix 1?

Question 21.2: If Ecology makes such a determination, will it then issue a permit modification? If not, why not?

Comment 22: Condition S5.C.5.b.i. also states that "more stringent requirements may be used, and/or certain requirements may be tailored to local circumstances through the use of basin plans or other similar water quality and quantity planning efforts. Such local requirements and thresholds must provide equal protection of receiving waters and

equal levels of pollutant control as compared to Appendix 1." PSA supports providing for application or more stringent requirements based on local circumstances, but this language should be strengthened to *require* more stringent requirements as necessary to ensure compliance with water quality standards. Also, the list of suggested venues for establishing more stringent or tailored requirements should include recovery planning forums and efforts such as the Shared Strategy for Puget Sound and the Lower Columbia River Fish Recovery Board, in addition to "basin plans or other similar water quality and quantity planning efforts." Finally, it seems counterproductive and illogical to require these more stringent or better tailored requirements to provide only "equal protection of receiving waters and equal levels of pollutant control as compared to Appendix 1." More stringent or better tailored requirements should provide *superior* protection and *superior* levels of pollution control.

Comment 23: Condition S5.C.5.b.ii. purports to allow permittees to use the *2005 Stormwater Management Manual for Western Washington* or "an equivalent manual approved by the Department." It is unacceptable to incorporate unidentified guidance documents that do not yet exist, and where there will be no opportunity for public review or challenge of Ecology's equivalency determination. See Comment 16. Condition S5.C.7.b.i. also purports to authorize the use of "an equivalent manual."

Comment 24: PSA is pleased to see that barriers to Low Impact Development technologies must be removed under Condition S5.C.5.b.iii., but the permit does not go far enough. As the draft fact sheet acknowledges, LID is one of the most effective ways to minimize impacts of stormwater discharges from areas of new development and redevelopment. The permit should establish appropriate LID standards to be incorporated into permittees' programs.

Comment 25: Condition S5.C.5.b.iv.(3). purports to allow permittees to gain extensions by written request citing circumstances beyond the permittee's control, "such as litigation or administrative appeals." First, allowing an extension modifies the terms of the permit, and should not be done in an informal process such as is outlined here. If extensions will be allowed, this section should clarify that only litigation or administrative appeals of the local manual and ordinances required by this section are grounds for a request for an extension.

Comment 26: Condition S5.C.5.b.vi.(2). omits the requirement to inspect "all development sites that are hydraulically near a sediment/erosion-sensitive feature," which was included in the preliminary draft (Prelimnary Draft S7.C.5.b.vii.(2)).

Question 26.1: Why does the draft drop the inspection requirement for "all development sites that are hydraulically near a sediment/erosion-sensitive feature"?

Comment 27: Condition S5.C.5.b.vi.(5). states that compliance with inspection requirements shall be determined by the presence of an established inspection program designed to inspect all sites involving land disturbing activity that meet the thresholds in S5.C.5.b.i. "and achieve inspection of 95% of sites." First, as written, it is unclear

whether compliance will be determined by actual inspection of 95% of sites, or by the existence of a program designed to achieve inspection of 95% of sites. In general, PSA objects to terms providing for presumptive compliance. However, if Ecology insists on such a term in this case, the permit should require evidence and demonstration of actual inspection of 95% of sites in order to meet the presumption.

Question 27.1: The provision is unclear as written. Is compliance determined by actual inspection of 95% of sites, or by the existence of a program designed to achieve inspection of 95% of sites?

Question 27.2: As a practical matter, how will Ecology and the public know whether permittees are achieving the 95% inspection threshold for presumed compliance?

Comment 28: Condition S5.C.5.b.vi.(6). requires permittees to have a procedure for keeping records of inspections and enforcement actions, and provides a list of the types of records to retain. However, the permit does not seem to require that all of these types of records be generated. The permit should be more explicit that staff conducting the inspections required by S5.C.5.b.vi. prepare reports of the inspections indicating what the inspections revealed and any recommended follow-up.

Comment 29: Condition S5.C.6.a. provides that the permittee's program to construct structural stormwater controls "shall address impacts that are not adequately controlled by the other required actions of the SWMP ..." This provision does not indicate how or by whom this determination is to be made, and should be clarified.

Question 29.1: What does "not adequately controlled by the other required actions of the SWMP" mean? Is this the criteria for implementing structural stormwater controls? How should this be determined? Does the permittee make this determination, or does Ecology?

Comment 30: The preliminary draft allowed permittees 12 months to develop and begin implementing a structural stormwater control program; under Condition S5.C.6.b.i. of this draft, permittees have 18 months. That is too long. The permit should revert to 12 months, or less.

Comment 31: The planning process used to develop a structural stormwater control program should be at the watershed/basin level and require permittees to coordinate and collaborate with other entities under municipal stormwater NPDES permits that share the same watershed/basin. Additionally, the structural stormwater control program planning process should decide timelines based on prioritization, and prioritization criteria should include effects on listed water-dependent species. Finally, the description of the structural stormwater control program required by S5.C.6.b.ii. should identify how the program will ensure compliance with water quality standards.

Comment 32: Condition S5.C.6.b.iii. requires SWMPs to include certain information about planned individual projects. Timelines and deadlines for completion of these projects should be articulated.

Comment 33: Condition S5.C.7.a.iii. provides that "Permittees that are in compliance with the terms of this permit will not be held liable by Ecology for water quality standard violations caused by industries covered under an NPDES permit issued by Ecology." While it seems inappropriate to prospectively limit Ecology's prosecutorial discretion in this way, PSA appreciates that the permit does not make industry-caused violations of water quality standards a flat exception to the requirement of municipal permittees to comply with water quality standards, for to do so would violate RCW 90.48.520.

Question 33.1: As a practical matter, how will Ecology or the public know whether a violation of water quality standards is one caused by industries covered under an NPDES permit or by failures in the municipality's stormwater program?

Comment 34: Condition S5.C.7.b.i. provides that structural source control BMPs shall be required if operational source control BMPs "are determined not to be effective, resulting in an illicit discharge or causing or contributing to a violation of surface water, ground water, or sediment management standards because of inadequate stormwater controls." It is unclear how, when, and by whom this determination is to be made. The permit should clarify these points. Additionally, it appears there should be a paragraph break before the sentence beginning, "Operational source control BMPs shall be required ...."

Question 34.1: How, when, and by whom is the determination made that operational source control BMPs are not effective, resulting in an illicit discharge, or causing or contributing to violations of water quality standards because of inadequate stormwater controls?

Comment 35: Condition S5.C.7.b.ii. provides permittees 12 months to "establish a program to identify sites which are potentially pollution generating." A year is far too long to accomplish this basic task, which does not even require the permittees to have actually identified the pollution-generating sites. The permit should require this program to be established within 90 days.

Question 35.1: Are the two enumerated aspects of this program exclusive requirements, or minimum measures?

Question 35.2: Why doesn't the permit establish a deadline for actual identification of potentially pollution generating sites?

Question 35.3: Are permittees required to report the results of this program? If not, why not?

Comment 36: Condition S5.C.7.b.iii. gives permittees 24 months to implement a self-audit/inspection program for potentially pollutant-generating sites identified under Condition S5.C.7.b.ii. Two years is far too long to accomplish this task. The permit should require this program to program to be established within 6 months. Furthermore, the preliminary draft required that the inspection program be designed to inspect all sites within 8 years. While PSA believes that 8 years is too long to achieve that goal, there should still be a requirement that the inspection program be designed to ensure all sites (to which the permittee may legally gain access) are inspected at least once during the life of the permit.

Question 36.1: Recognizing that owners of some sites might deny access for inspection purposes, why did Ecology drop the requirement to design an inspection program to inspect all other sites within 8 years?

Comment 37: Condition S5.C.7.b.iv. establishes a lengthy timeline for implementation of an enforcement policy, and should be shortened. Also, subsection (1) of this condition suggests that follow-up inspections need not be part of a progressive enforcement when the permittee determines a site has failed to implement all necessary BMPs. A timely follow-up inspection seems to be a minimum necessary component of an effective enforcement program, as it is the basis for the next step in the progressive enforcement policy (see S5.C.7.b.iv.(2)). The permit should require follow-up inspections within 30 days as part of the permittees' enforcement program.

Comment 38: Condition S5.C.7.v. allows permittees 24 months to train responsible staff. Two years is too long to provide such training, particularly when S5.C.7.b.i. requires permittees to begin enforcement of ordinances requiring the application of source control BMPs within 12 months. The permit should require that staff be trained to enforce the ordinance as soon as the ordinance is enforceable.

Comment 39: Condition S5.C.8.b.ii.(1) states that the regulatory mechanism to effectively prohibit illegal discharges and/or dumping "does not need to prohibit" certain categories of non-stormwater discharges "unless the discharges are identified as significant sources of pollutants to waters of the State." This provision does not indicate how or by whom this determination should be made. Also, among these categories are "rising ground waters." Rising ground waters may be contaminated with serious non-stormwater pollutants, including septic system pollutants and contaminants from other sources. This category should be changed to "uncontaminated rising ground waters."

Question 39.1: How is the determination that non-stormwater discharges in the categories listed under S5.C.8.b.ii.(1). are significant sources of pollutants to waters of the State to be made, and by whom?

Comment 40: S5.C.8.b.ii.(2) requires the permittees to prohibit certain categories of non-stormwater discharges, except under certain conditions. Ecology should add residential car wash water to this list, and articulate appropriate conditions, such as washing cars on lawns or other permeable surfaces.

Comment 41: S5.C.8.b.iii. allows permittees 18 months to train field staff responsible for identification, investigation, termination, cleanup and reporting illicit discharges. S5.C.8.b.iv. allows permittees 24 months to train field staff who are not directly responsible for the tasks above. This timeline is too long and should be shortened. Since the 1995 permit required an ongoing program to detect, remove, and prevent illicit discharges and improper disposal, permittees have presumably already trained the appropriate staff to perform these tasks. Initial training should be done within 12 months.

Comment 42: Condition S5.C.8.b.vi. requires permittees to complete an outfall reconnaissance inventory 180 days prior to expiration of the permit, or within 4 ½ years. This timeline is too long and does not comply with § 402(p)(4)'s requirement that permits provide for compliance "as expeditiously as possible, but in no event later than 3 years after the permit is issued."

Question 42.1: How does this condition comply with §402(p)(4) of the Clean Water Act?

Question 42.2: What is the justification for requiring counties to complete the reconnaissance for only *half* of the streams and shorelines in urban/higher density rural sub-basins?

Comment 43: Condition S5.C.8.b.vii. allows permittees three weeks (21 days) to initiate an investigation of an illicit connection, and then six months (180 days) to make a "documented effort" to eliminate the illicit connection. This response time is totally inadequate when illicit connections could present serious problems. The permit should state that permittees must initiate an investigation "as soon as possible and not later than 7 days" after it discovers or receives a report of an illicit connection, and should require permittees to use enforcement authority to *ensure* removal of the confirmed illicit connection within 30 days. Additionally, subsection (3) should provide permittees better guidance as to what constitutes the "good faith effort of progressive enforcement" before referring the matter to Ecology.

Question 43.1: Given that some illicit connections pose significant problems, how long should permittees undertake a "good faith effort" at enforcement before referring the violation to Ecology?

Comment 44: Condition S5.C.8.b.vii. is unclear as written. It appears that the second and third sentences should be included among the procedures to which the first sentence refers, rather than as individual directives to the permittee. The first sentence is also missing a space between "Permittee" and "shall" on line 29.

Question 44.1: What exactly does "immediately respond to problems/violations judged to be urgent, severe, or an emergency"? Does that mean within 24 hours? 12

hours? An hour? And what are the criteria upon which to judge whether a problem is urgent?

Comment 45: Condition S5.C.9.b.i. provides that maintenance standards are violated only if inspection identifies "required maintenance action related to facility function" and the maintenance action is not completed within a certain period of time: 6 months for typical maintenance, 9 months for revegetation, and 2 years for capital construction of less than $25,000. The timelines here are too long, especially for typical maintenance, and should be shortened.

Question 45.1: Does Ecology anticipate that some maintenance actions will require capital construction of more than $25,000? If so, what is the timeline for completing maintenance actions of that type?

Comment 46: PSA supports the permit's requirement for permittees to inspect and enforce maintenance of stormwater facilities regulated by the permittee. Many housing developments contain stormwater facilities that homeowners' associations are expected to inspect and maintain. The failure of these associations to provide proper inspection and maintenance poses a significant impediment to effective stormwater control. PSA appreciates the permit's efforts to solve this problem, but the timelines in Condition S5.C.9.b.ii. are too long. This is particularly true of Condition S5.C.9.b.ii.(3), which allows permittees 4 years to develop an ongoing inspection schedule to annually inspect all stormwater treatment and flow control facilities other than catch basins. This timeline is too long and does not appear to comply with the requirement that permits provide for compliance "as expeditiously as possible, but in no event later than 3 years after the permit is issued."

Question 46.1: How does this condition comply with §402(p)(4) of the Clean Water Act?

Comment 47: Condition S5.C.9.b.ii.(4) is unclear as written.

Question 47.1: Does this condition require permittees to begin inspecting new permanent stormwater treatment and flow control facilities, including catch basins, in *all* new residential developments every 6 months, beginning two years from the effective date of the permit? Put another way, are permittees required to have inspected all such facilities 2 ½ years after the effective date of the permit?

Comment 48: Condition S5.C.9.b.ii.(5) establishes a presumptive compliance scheme. See Comment 28.

Comment 49: S5.C.9.b.iii. and iv. give permittees 24 months to "begin implementing" certain inspection programs. These timelines are too long, especially since responsible governments will already have such programs in place given the under the 1995 permit requirement to implement an operation and maintenance program for

new and existing stormwater facilities owned or operated by the permittee. Also, S5.C.9.b.iii. provides another presumptive compliance scheme; see Comment 28.

Comment 50: S5.C.9.b.vi. and vii. give permittees a year to establish practices to reduce stormwater impacts associated with runoff from various properties owned, operated, or maintained by the permittee. In the case of parking lots, streets, roads, and highways, the permittees are not required to begin to implement these practices for another 6 months after that. It does not seem reasonable that it would take 12 months to establish appropriate practices, when these are addressed by the *2005 Stormwater Manual* and need not be reinvented. In addition, the 6-month implementation delay seems arbitrary. Permittees should be required to begin implementing practices to reduce stormwater impacts as soon as the practices are established, which should be no more than 6 months from the effective date of the permit.

Question 50.1: What is the justification for the 6-month implementation delay?

Comment 51: S5.C.9.b.viii. allows permittees 2 years to develop and implement an ongoing training program for appropriate employees. Having properly trained employees to implement these programs is key to the programs' success. Permittees should be required to train employees within a year, at least on those elements of the operations and maintenance program that are to be developed within that timeframe.

Comment 52: S5.C.9.b.ix. allows permittees 18 months to develop SWPPPs for all heavy equipment maintenance or storage yards, and material storage facilities owned or operated by the Permittee. Under the Industrial Stormwater General Permit, permittees are required to develop and implement a SWPPP within 30 days of obtaining coverage (for existing facilities). It does not seem reasonable that municipal permittees should have 17 extra months to perform the same task, particularly given the provision allowing permittees to apply generic SWPPPs at multiple sites. Permittees should be required to develop and implement SWPPPs within 30 days.

S5.C.9.b.ix. also provides that implementation of non-structural BMPs must begin immediately after the SWPPP is developed and that the SWPPP must include an implementation schedule for structural BMPs. The permit should also provide reasonable deadlines for structural BMPs to be fully implemented. PSA suggests secondary and co-permittees be given no more than 1 year to accomplish this.

Question 52.1: What is the justification for the large discrepancy between similarly situated permittees in terms of the timelines for developing SWPPPs for industrial areas?

Question 52.2: How does the permit ensure that structural BMPs will be implemented "as expeditiously as practicable, but in no event later than 3 years after" the permit is issued, to comply with CWA § 402(p)(4)?

Comment 53: PSA encourages effective public awareness campaigns, and appreciates the permit's direction to use a "variety of methods" to accomplish this task. In addition to the objectives listed under Condition S5.C.10.b.ii., education and outreach programs should promote understanding of the importance of maintaining forest cover where possible.

Condition S6: Stormwater Management Program for Co- and Secondary Permittees

Comment 54: Since Ecology has determined that implementing the SWMPs required by this permit constitutes MEP, the CWA requires these SWMPs to be fully implemented "as expeditiously as possible, but in no event later than 3 years after the permit is issued." 33 U.S.C. § 1342(p)(4). Condition S6.A. allows secondary and co-permittees 4 ½ years from the effective date of the permit to develop and implement a SWMP. This timeline is too long and does not comply with §402(p)(4) of the Clean Water Act.

Question 54.1: How does this condition comply with §402(p)(4) of the Clean Water Act?

Question 54.2: When Permittees must develop their SWMPs and submit then with the first annual report, what is the justification for allowing secondary and co-permittees so much longer to perform the same task?

Comment 55: Condition S6.B. requires SWMPs to include mechanisms to encourage coordinated stormwater-related policies and projects within a watershed. PSA supports requirements for watershed-level planning and coordination.

Comment 56: Condition S6.D.1. establishes timelines that are far too long. S6.D.1.a. gives Ports 2 years to map outfalls. This seems like too long for this task to be completed, particularly when permittees have the same length of time to complete the same task on a much larger scale. Condition S6.D.1.d. allows 2 years to simply develop and implement a program to maintain operation and maintenance records for stormwater facilities. The preliminary draft required both of these tasks to be completed within 18 months. PSA believes 18 months is more than adequate for both of these tasks.

Question 56.1: What is the justification for allowing so long for these tasks to be completed?

Comment 57: Condition S6.D.2. states that the SWMP shall include a program to reduce pollutants in runoff. The permit should clearly state the legal MEP standard for reducing pollutants.

Comment 58: Condition S6.D.2.a. allows Ports 2 years to develop SWPPPs. Under the Industrial Stormwater General Permit, permittees are required to develop and implement a SWPPP within 30 days of obtaining coverage (for existing facilities). It does not seem reasonable that municipal permittees should have 23 extra months to

perform the same task. Ports should be required to develop and implement SWPPPs within 30 days.

Question 58.1: What is the justification for the large discrepancy between similarly situated permittees in terms of the timelines for developing SWPPPs for industrial areas?

Comment 59: Condition S6.D.2.c. indicates that implementation of non-structural BMPs must begin immediately after the SWPPP is developed and that the SWPPP must include an implementation schedule for structural BMPs. The permit should also provide reasonable deadlines for these BMPs to be fully implemented. PSA suggests Ports be given no more than 1 year to accomplish this.

Question 59.1: How does the permit ensure that structural BMPs will be implemented "as expeditiously as practicable, but in no event later than 3 years after" the permit is issued, to comply with CWA § 402(p)(4)?

Comment 60: Condition S6.D.2.d. requires the Ports to inspect 15% of sites for which SWPPPs are required annually, with 80% of sites inspected within 4 ½ years after the permit is issued. This does not seem to be a very ambitious goal. At a minimum, the Port should be required to inspect all sites at least once within this same period.

Comment 61: Condition S6.D.3.a. provides 2 years for each Port to prepare an operations and maintenance manual. The preliminary draft required this task to be completed within 18 months. PSA believes 18 months is more than adequate for Ports to complete this task. Additionally, the condition provides that maintenance and inspection schedules are violated only when necessary maintenance is not completed within particular timeframes. See Comment 40 and Question 40.1.

Comment 62: S6.D.4.a. gives Ports 18 months to provide educational materials to tenants and employees. Again, this timeline seems absurdly long for such a simple task, and should be reduced to 6 months at the longest.

Comment 63: Condition S6.D.6. should be rewritten to state that the SWMP shall include a program to "reduce pollutants in stormwater runoff to the MS3s ... *to the maximum extent practicable.*"

Comment 64: The timelines in Condition S6.D.6.f. are far too long and should be reduced. It is not reasonable to give Ports 3 years to label only half of its storm drain inlets. Ports should be required to label all storm drain inlets within 1 year. Similarly, it is not reasonable to give Ports 3 years to distribute educational information, particularly when the form of this information is entirely up to the Ports and when Ports may comply with this requirement simply by participating in their local jurisdiction's efforts. Both S6.D.6.f.i. and ii. provide that Ports have until the expiration of the permit to complete the task -- in practical terms, this means that the condition could never be violated, and is therefore unenforceable.

Question 64.1: What is the justification for these lengthy timelines?

Question 64.2: How does this term provide for compliance "as expeditiously as practicable, but in no event later than 3 years after" the permit is issued, to comply with CWA § 402(p)(4)?

Comment 65: Condition S6.F.2. does not require secondary permittees to make SWMPs available for public review for 4 ½ years of this 5 year permit. This timeline does not allow for meaningful public involvement and participation for almost the entire term of the permit. SWMPs should be made available for public review as soon as they are completed, which, to comply with CWA § 402(p)(4), should be no later than 3 years after the permit is issued.

Comment 66: Condition S6.F.3.b. states that the policies to prohibit illegal discharges and/or dumping "does not need to prohibit" certain categories of non-stormwater discharges "unless the discharges are identified as significant sources of pollutants to waters of the State." This provision does not indicate how or by whom this determination should be made. Also, among these categories are "rising ground waters." Rising ground waters may be contaminated with serious non-stormwater pollutants, including septic system pollutants and contaminants from other sources. This category should be changed to "uncontaminated rising ground waters."

Question 66.1: How is the determination that non-stormwater discharges in the categories listed under S6.F.3.b.ii. are significant sources of pollutants to waters of the State made, and by whom?

Comment 67: S6.F.3.b.iii. requires the secondary permittees to prohibit certain categories of non-stormwater discharges, except under certain conditions. Ecology should add residential car wash water to this list, and articulate appropriate conditions, such as washing cars on lawns or other permeable surfaces.

Comment 68: S6.F.3.c. gives secondary permittees 4 ½ years to develop a storm sewer map. This timeline is too lengthy, particularly when permittees must complete the same task in 2 years, and is inconsistent with CWA § 402(p)(4).

Question 68.1: How does this term provide for compliance "as expeditiously as practicable, but in no event later than 3 years after" the permit is issued, to comply with CWA § 402(p)(4)?

Comment 69: Condition S6.F.3.d. requires secondary permittees to visually inspect at least a third of all known outfalls each year, beginning 2 years from the date of the permit. This timeline is also too generous, and does not provide a deadline for all known outfalls to be visually inspected. Ecology should require all known outfalls to be visually inspected within 12 months. Additionally, this section should require secondary

permittees to develop and implement procedures to identify and remove illicit connections.

Comment 70: Condition S6.F.3.e. allows secondary permittees 4 ½ years to develop and implement a spill response plan. This timeline is outrageous, and seems inconsistent with MEP and AKART. A spill response plan is the simplest way to prevent stormwater pollution, and every responsible entity should already have developed such a plan. The permit should give secondary permittees 30 days to develop and implement the plan.

Question 70.1: What is the justification for allowing 4 ½ years to come up with a spill response plan?

Question 70.2: How does this term provide for compliance "as expeditiously as practicable, but in no event later than 3 years after" the permit is issued, to comply with CWA § 402(p)(4)?

Question 70.3: How does not requiring secondary permittees to have a spill response plan for 4 ½ years meet the MEP and AKART standards?

Comment 71: Condition S6.F.3.f. should include a reasonable deadline for staff training.

Condition S8: Monitoring

Comment 72: As indicated in Comment 3, CWA § 308(a) requires Ecology to require sufficient monitoring to run its program. The draft fact sheet identifies four monitoring objectives, including to "identify the degree to which stormwater discharges are impacting selected receiving waters and sediments." FS, p. 48, ll. 24-29. PSA supports imposing monitoring requirements that will satisfy each of the four monitoring objectives, and is greatly disappointed that Ecology has essentially abandoned the fourth objective in this permit. (The fact sheet explains that Ecology intends to rely on its own monitoring programs to accomplish that objective, but given Ecology's limited resources, PSA is extremely skeptical that Ecology will be able to meet this commitment.)

Obtaining good data on the impacts of stormwater discharges on receiving waters and sediments is necessary to ensure that discharges do not cause or contribute to violations of water quality standards. It is also necessary in order to determine whether water quality standards are being met through current management programs, or whether numeric effluent limitations should be established. Furthermore, monitoring data is critically important to understand the severity of the stormwater problem and have a better sense of what needs to be done to solve it. Finally, this sort of information would be extremely helpful in enforcement. PSA urges Ecology to reconsider its position to exclude monitoring designed to accomplish the fourth monitoring objective.

PSA encourages Ecology to consider the approach to monitoring taken in San Diego's municipal stormwater permit,[1] which is designed, in part, to answer the following "core management" questions:

1. Are conditions in receiving waters protective, or likely to be protective, of beneficial uses?
2. What is the extent and magnitude of the current or potential receiving water problems?
3. What is the relative urban runoff contribution to the receiving water problem(s)?
4. What are the sources of urban runoff that contribute to receiving water problem(s)?
5. Are conditions in receiving waters getting better or worse?

San Diego's monitoring program will answer these questions by requiring watershed-based monitoring program design, implementation, analysis, assessment, and reporting. San Diego's program will also require bioassessment monitoring to provide crucial information about the health and diversity of freshwater benthic communities within specific receiving waters. The fact sheet accompanying the San Diego permit provides more information on this type of monitoring:

> Bioassessment monitoring is a cost-effective tool that measures the effects of water quality over time. It is an important indicator of stream health and impacts from urban runoff. It can detect impacts that chemical and toxicity monitoring cannot. USEPA encourages permitting authorities to consider requiring biological monitoring methods to fully characterize the nature and extent of impacts from urban runoff. ...
>
> Bioassessment is the direct measurement of the biological condition, physical condition, and attainment of beneficial uses of receiving waters (typically using benthic macroinvertebrates, periphyton, and fish). Bioassessment monitoring integrates the effects of both water chemistry and physical habitat impacts (e.g., sedimentation or erosion) of various discharges on the biological community native to the receiving waters. Moreover, bioassessment is a direct measurement of the impact of cumulative, sub-lethal doses of pollutants that may be below reasonable water chemistry detection limits, but that still have biological effects.
>
> Because bioassessment focuses on communities of living organisms as integrators of cumulative impacts resulting from water quality or habitat degradation, it defines the ecological risks resulting from urban runoff.

[1] See: http://www.swrcb.ca.gov/rwqcb9/programs/stormwater/sd%20permit/Reissuance/Final%20Tentative%20M&R%20Program.pdf

> Bioassessment not only identifies that an impact has occurred, but also measures the effect of the impact and tracks recovery when control or restoration measures have been taken. These features make bioassessment a powerful tool to assess compliance, evaluate the effectiveness of BMPs, and to track both short and long-term trends .... Bioassessment can also help answer management questions 1, 2, and 5.

Fact Sheet/Technical Report for Tentative Order No. R9-2006-0011 (March 10, 2006) at p. 93.[2]

PSA strongly urges Ecology to include watershed-based, comprehensive monitoring program, including bioassessment monitoring, in this permit.

Comment 73: Condition S8 states that "results of the monitoring program shall be used to support the adaptive management process and lead to refinements of the Stormwater Management Program." PSA supports an adaptive management approach to controlling stormwater, but this permit does not appear to contain any adaptive management process whatsoever. PSA urges Ecology to incorporate a real adaptive management program into this permit. At a minimum, permittees should be required to indicate in the next permit application what changes they intend to make to their SWMPs to address the results of the monitoring program.

A better approach is reflected in San Diego's Tentative Receiving Waters Monitoring and Reporting Program, pages 6-7. That program provides, "When results from the chemistry, toxicity, and bioassessment monitoring described above indicate urban runoff-induced degradation ... Copermittees within the watershed shall evaluate the extent and causes of urban runoff pollution in receiving waters and prioritize and implement management actions to eliminate or reduce sources." The program includes a table indicating the types of follow-up actions, if any, that are required depending on the results of the monitoring program. PSA believes this approach would work well here, and urges Ecology to consider including a similar program in this permit.

Comment 74: Condition S8.A.1. requires Counties and Cities to monitor only three outfalls and requires the Ports to monitor only one outfall. These provisions severely limit the scope and scale of information that will be generated, undermine the entire monitoring program, and are inconsistent with the MEP and AKART standards. Cities have a plethora of "industrial" areas, and stormwater monitoring results from one cannot reasonably be expected to be representative of every other. It may be impracticable to monitor every outfall, as most industrial general permit holders are expected to do, but the monitoring program must be designed to elicit useful information.

Question 74.1: When there are thousands of outfalls and significant variation within each land use category, what is the justification for requiring so few monitoring sites?

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[2] See: http://www.swrcb.ca.gov/rwqcb9/programs/stormwater/sd%20permit/Reissuance/Final%20Tentative%20Fact%20Sheet.pdf

Question 74.2: Given the extremely limited number of monitoring sites, how does this permit achieve MEP, AKART, or ensure compliance with water quality standards?

Comment 75: Condition S8.A.2.a.i. establishes stormwater monitoring frequency at "75% of qualifying storms up to a maximum of 15 storm events per year." It seems that 75% of qualifying storms would equal far more than 15 storm events in Western Washington. The maximum number of storm events that should be sampled should be doubled.

Question 75.1: Is it Ecology's position that 15 storm events equals 75% of qualifying storms in Western Washington? If not, what is the purpose of the 75% language?

Question 75.2: What is the justification for requiring so few storm events be sampled?

Comment 76: Given the limited nature of the monitoring program outlined in this permit, PSA questions whether chemicals should ever be dropped from analysis, as provided in Condition S8.A.2.b. and e. At the very least, the last sentence of Condition S8.A.2.b. and second sentence of S8.A.2.e. should be modified as follows: "Chemicals that are below detection limits after two years of data may be dropped from the analysis, provided that permittee has complied fully with all requirements of S8."

Comment 77: PSA is pleased to see metals and phthalates included among the parameters to be tested in S8.A.2.b. As noted in Comment 67, the monitoring program should include testing of receiving waters to determine the impacts of stormwater discharges on water quality. At a minimum, the permit should require receiving water testing for background hardness and turbidity (upstream and downstream). This is the only way to determine whether stormwater discharges are causing or contributing to violations of water quality standards.

Question 77.1: Does the permit require receiving water testing for hardness and turbidity (both upstream and downstream of the discharge)? If not, why not?

Comment 78: Condition S8.B.2. provides minimum requirements for stormwater management program effectiveness monitoring as "either stormwater or receiving water monitoring of physical, chemical and/or biological characteristics." PSA strongly believes SWMP effectiveness monitoring should include both stormwater and receiving water monitoring for physical, chemical, and biological characteristics. Ecology should change this language to replace "or" and "and/or" with "and."

Comment 79: Condition S8.C.1. directs the Ports to conduct "full scale field monitoring" to evaluate effectiveness and operation and maintenance of stormwater

treatment and hydrologic management BMPs. It is unclear what "full scale field monitoring" means.

Question 79.1: What does the phrase "full scale field monitoring" mean here?

Comment 80: Watershed/basin-level coordination should be required in selecting treatment BMPs for the monitoring required in S8.C.2., and Ecology should facilitate BMP selection to ensure that a broad range of BMPs are monitored. Otherwise it is possible that all permittees will select the same BMPs.

Question 80.1: How does the permit ensure that a broad range of BMPs are monitored?

Comment 81: Condition S8.C.2.d. indicates the parameters to be monitored in "whole water." That term is not defined in the permit.

Question 81.1: What is "whole water"?

Comment 82: Condition S8.C.3. requires permittees to monitor the effectiveness of only one flow reduction strategy. This does not seem like a very ambitious goal, but in any event, watershed/basin-wide coordination and/or Ecology facilitation of selection should be required to ensure a broad range of strategies are monitored.

Question 82.1: How does the permit ensure that a broad range of flow control strategies will be monitored?

Comment 83: Condition S8.D. allows permittees to choose whether to collaborate with other municipal stormwater permittees in developing a monitoring program. PSA supports collaborative monitoring programs as an efficient, comprehensive, and cost-effective means of obtaining useful monitoring results. It appears that this type of coordination is already required by S5.C.3.b.ii., which requires permittees to establish and begin implementation of intergovernmental coordination procedures, including "Coordination necessary to develop an integrated monitoring program."

S8.D.1. should be more explicit that "the components of the monitoring program" refers to S8.A., S8.B., and S8.C., each of which contains multiple components.

Comment 84: PSA supports having Ecology review and approve QAPPs.

Comment 85: Although PSA recognizes that longer periods of time may be needed for collaboration, and may in effect act as an incentive to collaboration, the timelines in S8.E.1. are too lengthy. In particular, it is not clear why it should take a year to submit to Ecology a statement explaining permittees' commitment to a collaborative process, or 2 years to develop a summary description of the monitoring program and QAPPs. In addition, allowing 4 years to collect and analyze data for S8.C. is inconstant

with CWA §402(p). The timelines in S8.E.1. and 2. should be shortened. Full implementation of the stormwater and receiving water monitoring program for collaborative monitoring should begin no later than 2 years from the effective date of the permit; for independent monitoring, full implementation should begin no later than 1 year after the effective date of the permit.

Comment 86: The permit should require the first stormwater monitoring reports be submitted much sooner than provided in S8.F.1. PSA suggests the first reports be submitted by December 31, 2008 for independent monitoring and 2009 for collaborative monitoring.

Comment 87: PSA appreciates and supports the use of standardized reporting forms. This should make it easier to compare performance and compliance among the various entities.

Comment 88: As indicated in the errata sheet, the requirement for submitting annual reports should begin in 2007, not 2008.

General Conditions

Comment 89: Condition G4. should include reporting requirements for anticipated bypass (10 days advance notice) and unanticipated bypass (24 hour report), as required by 40 C.F.R. § 122.41(m)(3)(i), (ii).

Comment 90: Condition G9.B. identifies the types of records that must be retained. Reports of all inspections performed under this permit should be added to this list.

Comment 91: Condition G9.D. requires all sampling and analytical methods used to meet monitoring requirements to conform to guidelines contained in 40 C.F.R. § 136 "unless otherwise specified in this permit or approved in writing by Ecology." This provision appears to allow a change in permit conditions without a formal modification, and is inappropriate.

Comment 92: Condition G14.D. provides that the permit may be revoked when "information is obtained which indicates that cumulative effects on the environment from dischargers covered under this general permit are unacceptable." Ecology should explain what is meant by "cumulative effects" as well as the criteria by which to determine whether such effects are "unacceptable."

Question 92.1: In this context, what does "cumulative effects" mean?

Question 92.2: How will it be determined whether cumulative effects are "unacceptable"? Who will make that determination? What kind of information will trigger such a determination?

Yours truly,
SMITH & LOWNEY, P.L.L.C.

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